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19 Tms pg. 6-8

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA

14 BEST WESTERN INTERNATIONAL,
15 INC., an Arizona non-profit corporation,

16 Plaintiff,

17 v.

18 RUSSELL M. HONEYCUTT, an
19 individual; E. AUTRY DAWSEY, an
20 individual; and FAYE DAWSEY, an
21 individual,

22 Defendants.

No.

Verified Complaint for Federal Trademark
Infringement, False Designation of Origin,
Federal Trademark Dilution, Breach of
Contract, Open Account, Post Termination
Use of Trademarks, Unfair Competition, State
Trademark Dilution, and Common Law
Trademark Infringement

23 Plaintiff Best Western International, Inc. ("Best Western"), for its Verified
24 Complaint against Defendants, Russell Honeycutt, E. Autry Dawsey, and Faye Dawsey, all
25 believed to be North Carolina residents, alleges as follows:

NATURE OF THE ACTION

1
2 1. This is an action for breach of contract, federal trademark infringement,
3 and unfair competition under the Trademark Act of 1946, as amended (the Lanham Act, 15
4 U.S.C. §§ 1051 *et seq.*), and related common law and Arizona statutory causes of action
5 arising from Defendants' refusal to cease and desist their unauthorized use of Best Western's
6 trade name, trademarks, service marks, logos, and other intellectual property and similar
7 identifying symbols (the "Best Western Symbols") in violation of Best Western's federal and
8 common law trademark rights.
9

10 2. Defendants' continued use of Best Western Symbols also constitutes a
11 breach of contract, giving rise to liquidated damages.
12

13 3. Defendants have also failed to pay amounts owing to Best Western on an
14 open account, constituting a violation of common law, breach of contract, and were unjustly
15 enriched.
16

THE PARTIES, JURISDICTION, AND VENUE

17 4. Plaintiff Best Western is a non-profit corporation organized under the
18 laws of the State of Arizona with its headquarters located in Phoenix, Arizona.
19

20 5. Defendant E. Autry Dawsey is believed to be a North Carolina resident;
21 is the owner of the hotel property at issue in this case; and executed the parties' contract for a
22 Best Western membership. Defendant E. Autry Dawsey is referred to here as "Defendant E.
23 Dawsey."
24

25 6. Defendant Faye Dawsey is believed to be a North Carolina resident;
executed the parties' contract for the Best Western membership at issue here as the spouse of

1 Defendant E. Dawsey; and is identified in the Membership Agreement as having an interest in
2 the hotel property at issue. Defendants E. Dawsey and Faye Dawsey are referred to
3 collectively as "Defendants Dawsey."

4
5 7. Defendant Russell Honeycutt is believed to be a North Carolina resident;
6 executed the parties' contract for a Best Western membership; and was designated as the
7 Voting Member for the membership. Defendant Russell Honeycutt is referred to here as
8 "Defendant Honeycutt."

9
10 8. This Court has jurisdiction over the Lanham Act claim set forth below by
11 virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and over the other claims set
12 forth below by virtue of 28 U.S.C. §§ 1332, 1367 and/or 1338(b).

13
14 9. There are no matters pending between the parties in any other jurisdiction
15 regarding Defendants' Lanham Act violations.

16
17 10. Best Western is an Arizona non-profit corporation with its principal place
18 of business in Phoenix, and its witnesses are either located in Phoenix or available in Phoenix,
19 and Defendants executed a contract that contained a forum selection clause requiring all
20 disputes arising from that contract be resolved by an Arizona state or federal court.
21 Defendants' trademark violation impacts the goodwill and reputation of Best Western and all
22 of its members, resulting in a significant, direct harm and effect on Best Western, an
23 American corporation engaged in commerce in the United States, Canada, and worldwide.
24 Defendants contractually agreed to liquidated damages in the event that they continued to use
25 Best Western Symbols after the termination of their membership. Defendants' continued use
of the Best Western Symbols, a business name representing quality and reputation that is sold

1 for use by others, wrongfully capitalizes on the goodwill and reputation of Best Western. If
2 the Best Western name is diluted and the reputation tainted, all Best Western members and
3 customers are adversely impacted.

4
5 11. Venue in this judicial district and the exercise of personal jurisdiction
6 over Defendants by this Court are proper pursuant to 28 U.S.C. § 1391(b) and (c) and
7 because, among other reasons: (a) the Defendants expressly contractually agreed to litigate all
8 disputes with Best Western arising from or related to the Best Western Membership
9 Application and Agreement executed by Defendants on or about September 7, 1994 (the
10 "Membership Agreement"), or any relationship between the parties, in the Arizona state or
11 federal courts; (b) Defendants have caused events to occur and injuries to result in the State of
12 Arizona; and (c) Defendants aimed their conduct at Best Western knowing that Best Western
13 is located in Arizona, and harming Best Western in Arizona. *See* Membership Application
14 and Agreement, attached here as Exhibit 1, Paragraphs 37-38.
15

16
17 **GENERAL ALLEGATIONS**

18 12. Best Western operates as a membership organization consisting of
19 individually owned and operated hotels (i.e., its members). The rights and obligations of Best
20 Western's members are determined by the membership and are set forth in the Membership
21 Agreement, Best Western's Bylaws & Articles, Best Western's Rules and Regulations, and
22 other Best Western "Regulatory Documents" as that term is defined in Best Western's Bylaws
23 (the "Regulatory Documents").
24

25 13. Best Western provides its members with a worldwide reservation system
and worldwide marketing campaigns, as well as an option to participate in collective

1 purchasing of hotel equipment, furnishings, and supplies (the "Best Western Services"). Best
2 Western employs a large number of employees worldwide who are dedicated to providing
3 member hotels with the Best Western Services.

4
5 14. Each Best Western member is authorized to use the Best Western
6 Symbols in connection with its hotel pursuant to a limited, non-exclusive license (the "Best
7 Western License"), which is set forth in the Membership Agreement. See Membership
8 Agreement at ¶¶ 1, 19-26.

9
10 15. In exchange for receiving the Best Western Services and use of the Best
11 Western License, Best Western members are obligated to, among other things, pay annual
12 dues, membership fees, and other assessments. The membership fees are due December 1 of
13 each year and are billed in monthly installments over the course of the following year to
14 accommodate members. Annual dues are charged in August of each year. All other dues,
15 fees and assessments are billed monthly. Pursuant to Best Western Bylaws Article II, Section
16 7, if a member resigns or is terminated, fees and dues for the remainder of the fiscal year will
17 become immediately due and payable.

18
19 16. Best Western first adopted "Best Western" as its trade name in 1947.
20 Shortly thereafter, Best Western adopted and began using "Best Western" as a trademark
21 identifying hotel services provided by member hotels that were affiliated with Best Western.
22 Best Western has continuously and extensively promoted its trade name and trademark in
23 interstate commerce since 1947. As a result of this extensive promotion, the trade name and
24 trademark have become famous among consumers as a source-identifying symbol.
25

1 17. Since 1959, Best Western has registered with the United States Patent
2 and Trademark Office ("USPTO") various trademarks, service marks, and collective
3 membership marks. On April 14, 1959, the Best Western logo was first registered as a service
4 mark by the USPTO under Registration No. 677,103. Best Western has developed the Best
5 Western Symbols at great expense over the past decades.
6

7 18. Best Western owns the following registrations for Best Western Symbols
8 and the marks referenced in these registrations:

9 (a) a Best Western logo was registered as a collective membership
10 mark by the USPTO on June 8, 1971, under Registration No. 914,812, which was registered
11 to Western Motels, Inc., but assigned to Best Western International, Inc. in 1979, and is still
12 active;
13

14 (b) a Best Western logo was registered as a service mark by the
15 USPTO on June 8, 1971, under Registration No. 914,813, which was registered to Western
16 Motels, Inc., but assigned to Best Western International, Inc. in 1979, and is still active;
17

18 (c) a Best Western logo was registered as a service mark by the
19 USPTO on August 30, 1977, under Registration No. 1,072,360;

20 (d) a Best Western logo was registered as a collective membership
21 mark by the USPTO on September 27, 1977, under Registration No. 1,074,300 to Best
22 Western, Inc. and assigned to Best Western International, Inc. in 1979, and is still active;

23 (e) the Best Western word mark was registered by the USPTO as a
24 service mark on February 3, 1987, under Registration No. 1,427,735;
25

1 (f) the Best Western word mark was registered by the USPTO as a
2 collective service mark on March 10, 1987, under Registration No. 1,432,431;

3 (g) the Best Western crown logo design was registered by the USPTO
4 as a service mark on December 6, 1988, under Registration No. 1,515,712;

5 (h) Best Western's current logo was registered by the USPTO as a
6 trademark on June 20, 1995, under Registration No. 1,900,620;

7 (i) Best Western's current logo was registered by the USPTO as a
8 service mark on November 7, 1995, as Registration No. 1,933,830;

9 (j) Best Western's current logo was registered by the USPTO as a
10 service mark on November 25, 1997, as Registration No. 2,116,079;

11 (k) Best Western's current logo was registered by the USPTO as a
12 service mark on October 14, 1997, as Registration No. 2,105,546;

13 (l) Best Western's current logo was registered by the USPTO as a
14 service mark on March 3, 1998, as Registration No. 2,140,332;

15 (m) the Best Western globe and pillow logo design was registered by
16 the USPTO as a service mark on December 24, 2002, as Registration No. 2,665,955;

17 (n) the BEST WESTERN word mark was registered by the USPTO as
18 a service mark on August 3, 2004, under Registration No. 2,869,617;

19 (o) the BESTWESTERN.COM word mark was registered by the
20 USPTO as a service mark on April 19, 2005, under Registration Nos. 3,107,814, 3,080,655
21 and 3,083,667;

1 (p) BW was registered by the USPTO as a service mark on November
2 29, 2005, under Registration No. 3,020,526; and

3 (q) Best Western has registered a variety of other designs and phrases
4 as service marks in connection with the trade of hotel and motel lodging, many of which
5 incorporate the words BEST WESTERN.
6

7 19. All of the registrations described above are currently in full force and
8 effect, unrevoked, and uncanceled. Several of the above listed federal registrations for the
9 Best Western word mark and logo have become incontestable under 15 U.S.C. § 1065.

10 20. The Best Western Symbols are inherently distinctive and possess strong
11 secondary meaning.
12

13 21. The Membership Agreement and Regulatory Documents establish the
14 minimum standard scores that each member must meet in order to achieve and maintain
15 membership. As a result, consumers worldwide associate Best Western Symbols with high
16 quality in the hotel/motel industry.
17

18 22. A key element of Best Western's branding effort is the display of the
19 Best Western Symbols on the premises of member hotels through signs, publications, and
20 other public displays.

21 23. Upon default by a member of certain of its obligations to Best Western,
22 including obligations set forth in the Membership Agreement and Regulatory Documents, the
23 Best Western Board of Directors may terminate the membership and the Best Western
24 License.
25

1 24. Within 15 days following the termination of membership, the former
2 member must cease and desist from using, and remove from public view, all Best Western
3 Symbols and all references to Best Western. The former member is also required to cease and
4 desist from using any item that is similar to the Best Western Symbols in spelling, sound,
5 appearance, or in any other manner.
6

7 **DEFENDANTS' BEST WESTERN MEMBERSHIP**

8 25. On or about September 7, 1994, Defendants Dawsey and Defendant
9 Honeycutt executed the Membership Agreement attached here as Exhibit 1 as the owners of
10 the Hotel and as the Voting Member, respectively.
11

12 26. Upon Best Western's approval of the Membership Agreement,
13 Defendants Dawsey and Defendant Honeycutt were bound by the Membership Agreement
14 and Regulatory Documents.
15

16 27. Defendants Dawsey and Defendant Honeycutt owned and operated the
17 hotel formerly known as the Best Western Premiere Inn, located at 503 North JK Powell
18 Blvd., Whiteville, North Carolina, 28472-2128, which is referenced in Best Western's records
19 as property T-34072 (the "Hotel").
20

21 28. Through the Membership Agreement and the Regulatory Documents,
22 Defendants agreed to timely pay all fees, dues, charges, and assessments imposed generally
23 on the membership by the board of Best Western and to promptly pay the costs of all goods or
24 services provided by or ordered through Best Western. Additionally, Defendants further
25 agreed that past due amounts would bear interest at the rate of one and one-half percent
(1.5%) per month from the date due until paid, provided that such interest charges would in

1 no way authorize or excuse late payments or limit Best Western's rights and remedies against
2 them.

3 29. The Membership Agreement grants the Best Western member a limited,
4 non-exclusive Best Western License, thereby allowing them to use the Best Western Symbols
5 in connection with the Hotel, subject to the terms of the Best Western License, and only for
6 the duration of the Best Western License.

8 30. Termination of the Best Western Membership results in termination of
9 the Best Western License, and imposes the obligation to "remove from public view and cease
10 using" all Best Western Symbols and all other references to Best Western within 15 days of
11 the date of termination. See Membership Agreement at ¶ 22.

13 31. Upon termination of the Best Western License, the former member(s)
14 must "actively take steps as may be necessary to cause the cessation of all advertising and
15 distribution of promotional material containing any Best Western Symbol." See Membership
16 Agreement at ¶ 22.

18 32. Upon termination of the Best Western License, the former member(s)
19 must not use "anything consisting of or incorporating any one or more words, letters, designs
20 or devices which contain any part of any Best Western Symbol, or which singly or together
21 are similar in spelling, sound, appearance or otherwise to any Best Western Symbol." See
22 Membership Agreement at ¶ 23.

23 33. The Regulatory Documents also state that:

24 Upon termination or cancellation of membership, the former Best
25 Western member *shall remove the Best Western sign When
 the sign cabinet is removed, it must be destroyed or modified so
 that the top of the cabinet has no curvilinear features* The

1 cost of removal of Best Western identification upon termination
2 shall be the responsibility of the former member.

3 See Rules and Regulations, Section 300.6, attached here as Exhibit 2.

4 34. Defendants' Best Western membership terminated on November 30,
5 2010, due to their delinquent open account. See Letter dated November 30, 2010 attached
6 hereto as Exhibit 3.

7 35. The cancellation of the membership resulted in cancellation of the
8 License to use Best Western Symbols, and therefore Defendants were obligated to remove
9 them within 15 days of November 30, 2010—by December 16, 2010.

10 36. On December 28, 2010, in the ordinary course of its business, Best
11 Western sent its representative to the Hotel. As part of his regular duties, Best Western's
12 representative observed Best Western Symbols displayed on various items throughout the
13 Hotel and on signage for the Hotel.
14

15 37. In a letter dated January 19, 2011, Best Western instructed the
16 Defendants that they must pay the full balance of their open account, which as of January 19,
17 2011 was \$98,645.07. The letter also advised the Defendants that they must discontinue any
18 unauthorized use of the Best Western name, signs, and logos; remove any and all listings of
19 the Hotel on internet websites under the Best Western name; and disclose the use/registration
20 of any domain names comprising any of the Best Western marks, and transfer such domain
21 names to Best Western International. A copy of the January 19, 2011 letter is attached as
22 Exhibit 4.
23
24
25

1 38. On February 21, 2011 and February 22, 2011, in the ordinary course of
2 its business, Best Western again sent its representative to the Hotel. As part of his regular
3 duties, Best Western's representative observed that the face of the main sign for the hotel had
4 been blacked out, but numerous logos remained on items found throughout the hotel—
5 including wastebaskets, laundry bags, evacuation signs, and phone plates. Additionally, Best
6 Western's representative observed that a roadside billboard still advertised the Hotel as a Best
7 Western member. *See* photographs attached as Exhibit 5.

9 39. Despite that it is no longer a Best Western, the December 28, 2010
10 inspection and subsequent February 21-22, 2011 inspection revealed that the Hotel continued
11 to hold itself out as a Best Western member after the License terminated.

13 40. Defendants' failure to remove the items bearing the Best Western
14 Symbols used in connection with the operation of the Hotel is likely to lead the travelling
15 public to believe that the Hotel is a Best Western property.

16 41. Defendants' failure to remove items containing the Best Western
17 Symbols in the Hotel and on the roadside billboard irreparably injures Best Western and its
18 members.

20 42. Defendants' continued use of Best Western Symbols beyond
21 December 16, 2010 also constitutes a breach of the Membership Agreement.

22 43. Defendants' intentional and unlawful use of the Best Western Symbols in
23 connection with the Hotel is likely to cause confusion for the travelling public and for those
24 who stayed at the Hotel with the mistaken belief that the Hotel was a Best Western property.
25

1 44. Defendants' misconduct also likely diverted to them the benefit of and/or
2 damaged the reputation and goodwill that Best Western built through the years.

3 45. As of March 1, 2011, Defendants owe Best Western no less than
4 \$101,983.13 on an open account that Defendants had while a Best Western member, which
5 represents certain fees and other charges imposed on the Hotel as a Best Western member.
6 See Invoices dated September 1, 2010 through March 1, 2011 attached hereto as Exhibit 6.

7 46. Best Western has fully performed all of its obligations under the
8 Membership Agreement.
9

10 47. Defendants have refused and continue to refuse to pay to Best Western
11 the amounts due and owing.
12

13 **COUNT I – BREACH OF CONTRACT**

14 48. Best Western incorporates by reference the allegations contained in
15 paragraphs 1 through 47 above as though fully set forth herein.

16 49. Defendants have refused and continue to refuse to pay to Best Western
17 the amounts due and owing as required by the Membership Agreement.
18

19 50. Pursuant to the express terms of the Membership Agreement, interest has
20 accrued and continues to accrue on the unpaid amounts at the rate of one and one-half percent
21 (1.5%) per month.

22 51. As of March 1, 2011, there remains due and owing, by Defendants to
23 Best Western, the sum of no less than \$101,983.13.

24 52. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341
25 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in

1 pursuing this action.

2 **COUNT II – OPEN ACCOUNT**

3 53. Best Western incorporates by reference the allegations contained in
4 paragraphs 1 through 52 above as though fully set forth herein.
5

6 54. Best Western rendered services and provided supplies on an open
7 account, and Defendants agreed to pay for such services and supplies on an open account and
8 to pay for such services and supplies when due in accordance with the Membership
9 Agreement.

10 55. Defendants have failed to pay for the services and supplies that Best
11 Western has provided. As of March 1, 2011, there remains due and owing, by Defendants to
12 Best Western, the sum of no less than \$101,983.13.
13

14 56. Pursuant to the express terms of the Membership Agreement, interest has
15 accrued and continues to accrue on this sum at the rate of one and one-half percent (1.5%) per
16 month until paid in full.

17 57. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341
18 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in
19 pursuing this action.
20

21 **COUNT III – BREACH OF CONTRACT; POST TERMINATION USE OF**
22 **TRADEMARKS**

23 58. Best Western incorporates by reference the allegations contained in
24 paragraphs 1 through 57 as though fully set forth herein.
25

1 59. Pursuant to the express terms of the Membership Agreement, Defendants
2 were obligated to remove from public view, and to cease all use of, the Best Western Symbols
3 in connection with the Hotel within fifteen (15) days after termination. This prohibition
4 includes making any representation, whether direct or indirect, indicating that the Hotel is
5 affiliated with Best Western.
6

7 60. Defendants continued to hold the Hotel out as a Best Western property
8 after the License terminated.

9 61. Paragraph 24 of the Membership Agreement provides for liquidated
10 damages where, as here, a former member continues to use the Best Western Symbols in
11 connection with the Hotel for more than fifteen (15) days following the termination of their
12 Best Western membership and the Best Western License. The amount of liquidated damages
13 is equal to fifteen percent (15%) of the mean of the Hotel's room rates per day, multiplied by
14 the total number of rooms for every day that a former member continues to use the Best
15 Western Symbols beyond the fifteen-day period.
16

17 62. Beginning December 16, 2010, Defendants owe \$1,098.01 per day for
18 each day they are unlawfully using the Best Western Symbols. The liquidated damages
19 calculations are based on the Hotel's information regarding daily rates and total number of
20 rooms. A copy of the Marketing Statistics Report showing the Average Daily Rates (ADR)
21 for the Hotel and the Best Western Account Information Computer Screen, showing the
22 number of units for the Hotel, are attached as Exhibit 7.
23

24 63. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. § 12-341.01,
25 Best Western is entitled to recover all attorneys' fees and costs incurred in this action.

COUNT IV – FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. § 1114(1))

64. Best Western incorporates by reference the allegations contained in paragraphs 1 through 63 as though fully set forth herein.

65. Defendants have failed to cease and desist from the use of the federally registered Best Western Symbols in connection with the Hotel.

66. The inspection revealed myriad federally registered Best Western Symbols displayed at the property and on a roadside billboard well after the License terminated.

67. Defendants' actions complained of have at all times been without Best Western's consent. Defendants' acts constitute infringement of the federally registered Best Western Symbols in violation of 15 U.S.C. § 1114(1).

68. Defendants' acts complained of have damaged Best Western irreparably. Monetary damages will not afford full and adequate relief for all of Best Western's injuries resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill and reputation in the marketplace that money cannot sufficiently compensate. Best Western is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and enjoining defendants and their respective officers, members, agents, servants, employees, and any other persons or entities acting on behalf of or in concert with Defendants, from using the Best Western Symbols or any colorable imitation thereof, in connection with the promotion, advertisement, and sale of goods and services without Best Western's authorization, pursuant to 15 U.S.C. § 1116.

1 76. Defendants' acts complained of have damaged Best Western irreparably.
2 Monetary damages will not afford full and adequate relief for all of Best Western's injuries
3 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill
4 and reputation in the marketplace that money cannot sufficiently compensate. Best Western
5 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and
6 enjoining defendants and their respective officers, members, agents, servants, employees, and
7 any other persons or entities acting on behalf of or in concert with Defendants, from using the
8 Best Western Symbols or any colorable imitation thereof, in connection with the promotion,
9 advertisement, and sale of goods and services without Best Western's authorization, pursuant
10 to 15 U.S.C. § 1116.
11

12
13 77. Defendants' acts of unfair competition are willful and entitle Best
14 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.

15 **COUNT VI – FEDERAL TRADEMARK DILUTION – (15 U.S.C. § 1125(c))**

16 78. Best Western incorporates by reference the allegations contained in
17 paragraphs 1 through 77 above as though fully set forth herein.
18

19 79. Best Western has advertised and publicized the Best Western Symbols
20 extensively for decades throughout the United States, including the State of Arizona. As a
21 result of their inherent distinctiveness and extraordinarily widespread use, the Best Western
22 Symbols have acquired a high degree of recognition and fame for hotel services.

23 80. Defendants' unauthorized post-termination use of the Best Western
24 Symbols in commerce began long after Best Western's Symbols had already become famous
25 throughout the United States, including the State of Arizona.

1 81. Defendants' unauthorized post-termination use of the Best Western
2 Symbols or variations thereof is likely to cause dilution of the distinctive quality of the Best
3 Western Symbols.

4 82. Upon information and belief, Defendants have committed the acts
5 complained of herein willfully and with the intent to trade on Best Western's reputation
6 and/or to cause dilution of Best Western's famous Symbols.

7 83. Defendants' acts complained of have damaged Best Western irreparably.
8 Monetary damages will not afford full and adequate relief for all of Best Western's injuries
9 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill
10 and reputation in the marketplace that money cannot sufficiently compensate. Best Western
11 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and
12 enjoining defendants and their respective officers, members, agents, servants, employees, and
13 any other persons or entities acting on behalf of or in concert with Defendants, from using the
14 Best Western Symbols or any colorable imitation thereof, in connection with the promotion,
15 advertisement, and sale of goods and services without Best Western's authorization, pursuant
16 to 15 U.S.C. § 1116.

17 84. Defendants' acts of unfair competition are willful and entitle Best
18 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.

19
20 **COUNT VII – UNFAIR COMPETITION – ARIZONA LAW**

21 85. Best Western incorporates by reference the allegations contained in
22 paragraphs 1 through 84 above as though fully set forth herein.
23
24
25

1 86. Defendants' acts complained of herein constitute unfair competition
2 under the laws of the State of Arizona.

3 87. Defendants have been unjustly enriched and have damaged Best
4 Western's business, reputation, and goodwill.

5 88. Upon information and belief, Defendants' acts complained of herein
6 were intentional, wanton, willful, guided by an evil hand and mind, and committed in bad
7 faith and with the intent to confuse and deceive the public.

8 89. Defendants' acts complained of herein have caused Best Western
9 irreparable harm for which there is no adequate remedy at law.
10

11 **COUNT VIII – TRADEMARK DILUTION UNDER ARIZONA LAW -**
12 **(A.R.S. § 44-1448.01)**

13 90. Best Western incorporates by reference the allegations contained in
14 paragraphs 1 through 89 above as though fully set forth herein.

15 91. The Best Western Symbols are famous within the State of Arizona, and
16 became famous in Arizona long before Defendants began using the marks.

17 92. Defendants' acts complained of herein constitute commercial use of a
18 mark or trade name that is likely to cause dilution of the distinctive quality of the famous Best
19 Western Symbols.
20

21 93. Defendants have undertaken these acts willfully and with the intent to
22 trade on Best Western's reputation or to cause dilution of the Best Western Symbols.

23 94. Defendants' acts complained of herein caused, or are likely to cause,
24 dilution to the famous Best Western Symbols in violation of A.R.S. § 44-1448.01.
25

1 95. Defendants' acts complained of herein have caused irreparable harm and
2 injury to Best Western's famous Best Western Symbols, business reputation, and goodwill for
3 which there is no adequate remedy at law.

4
5 **COUNT IX – TRADEMARK INFRINGEMENT UNDER ARIZONA LAW -**
6 **(A.R.S. § 44-1451)**

7 96. Best Western incorporates by reference the allegations contained in
8 paragraphs 1 through 95 above as though fully set forth herein.

9 97. The Best Western Symbols are famous within the State of Arizona, and
10 became famous in Arizona long before Defendants began using the marks.

11 98. Defendants' acts complained of herein constitute commercial use of a
12 mark or trade name and trademark infringement based on Arizona registered Trademark No.
13 51370 in violation of A.R.S. § 44-1451.

14 99. Upon information and belief, Defendants have undertaken these acts
15 willfully and with the intent to trade on Best Western's reputation and to cause confusion,
16 mistake, and deception on the public.

17 100. Defendants' acts complained of herein have caused irreparable harm and
18 injury to Best Western's famous Best Western Symbols, business reputation, and goodwill for
19 which there is no adequate remedy at law.

20
21 **COUNT X – COMMON LAW TRADEMARK INFRINGEMENT**

22 101. Best Western incorporates by reference the allegations contained in
23 paragraphs 1 through 100 above as though fully set forth herein.
24
25

